

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MAY 24, 25, and 26, 2005
(SECOND AMENDED)**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on May 24, 25, and 26, 2005.

TUESDAY, MAY 24, 2005—9:00 A.M.

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| (1) | S125912 | Elisa B. v. Superior Court (Emily B., et al., Real Parties in Interest) |
| (2) | S125643 | K.M. v. E.G. |
| (3) | S126945 | Kristine H. v. Lisa R. |

1:30 P.M.

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| (4) | S118180 | People v. Martinez (Victor) |
| (5) | S014021 | People v. Carter (Dean) [<i>Automatic Appeal</i>] |
| (6) | S023000 | People v. Carter (Dean) [<i>Automatic Appeal</i>] |

WEDNESDAY, MAY 25, 2005—9:00 A.M.

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| (7) | S125822 | In re Josiah Z. (<i>Baxter, J. not participating; F. Woods, J. assigned Justice Pro Tempore.</i>) |
| (8) | S115154 | Yanowitz v. L'Oreal USA |
| (9) | S129821 | Sara M. v. Superior Court (Tuolumne County Dept. of Social Services, Real Party Interest) |

1:30 P.M.

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| (10) | S117735 | Boghos v. Lloyd's of London |
| (11) | S011636 | People v. Blair (James) [<i>Automatic Appeal</i>] |

THURSDAY, MAY 26, 2005—9:00 A.M.

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| (12) | S124179 | Koebe v. Bernardo Heights Country Club |
| (13) | S112505 | In re Roberts (Orlando) on Habeas Corpus |
| (14) | S122058 | California State Personnel Board v. CSEA |

1:30 P.M.

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| (15) | S116223 | Fitch v. Select Products Company |
| (16) | S116870 | Department of Conservation v. County of El Dorado
(Brunius, Real Party in Interest) |
| | S014664 | People v. Gray (Mario) [<i>Automatic Appeal</i>] (<i>rescheduled to the May 31st calendar.</i>) |
| 17) | S014200 | People v. Dunkle (Jon) [<i>Automatic Appeal</i>] |

GEORGE

Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MAY 24, 25, and 26, 2005**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, MAY 24, 2005—9:00 A.M.

(1) *Elisa B. v. Superior Court (Emily B., et al., Real Parties in Interest)*, S125912;
(2) *K.M. v. E.G.*, S125643; and (3) *Kristine H. v. Lisa R.*, S126945

Elisa B., *K.M.*, and *Kristine H.* each includes one or more of the following issues:

(1) May the presumption in Family Code section 7611(d)—that a man is a presumed father if he “receives the child into his home and openly holds the child out as his natural child”—be applied to a birth mother’s same-sex partner when both women made the decision to have a child, received the child into their home and held the child out as their own, and agreed to support the child? (2) Under *Johnson v. Calvert* (1993) 5 Cal.4th 84, can both same-sex partners be considered the legal parents of children conceived as a result of artificial insemination and born during their domestic partnership? (3) Must a woman who donates ova that are fertilized in vitro and implanted in her domestic partner’s womb, resulting in the birth of a child, file an adoption petition in order to be a parent of the child under *Johnson v. Calvert*?

1:30 P.M.

(4) *People v. Martinez (Victor)*, S118180

#03-122 *People v. Martinez (Victor)*, S118180. (F039200; 110 Cal.App.4th 353; Superior Court of Merced County; 25556.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following

issue: May the Department of Toxic Substance Control, which incurred expenses in cleaning up the site where defendant attempted to manufacture methamphetamine, properly be considered a “direct victim” of the offense as to which the trial court can require defendant to pay restitution under Penal Code section 1202.4, or do the procedures set forth in Health and Safety Code section 11470.2 provide the exclusive means for obtaining recovery of such expenses from a defendant in a criminal proceeding?

(5) People v. Carter (Dean), S014021 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(6) People v. Carter (Dean), S023000

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, MAY 25, 2005—9:00 A.M.

(7) In re Josiah Z., S125822 (Baxter, J. not participating; F. Woods, J. assigned Justice Pro Tempore.)

#04-85 *In re Josiah Z.*, S125822. (F044121; 118 Cal.App.4th 944; Superior Court of Kern County; JD097344, JD097345.) Petition for review after the Court of Appeal denied motions on appeal from orders in dependency proceedings. This case includes the following issue: Does appellate counsel for a child in a juvenile dependency proceeding have the authority to seek dismissal of the appeal if counsel believes that dismissal of the appeal would be in the best interests of the child?

(8) Yanowitz v. L’Oreal USA, S115154

#03-80 *Yanowitz v. L’Oreal USA*, S115154. (A095474; 106 Cal.App.4th 1036; Superior Court of San Francisco County; 304908.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: How should “adverse employment action” be defined for purposes of an employee’s claim of unlawful retaliation under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.)?

(9) Sara M. v. Superior Court (Tuolumne County Dept. of Social Services, Real Party in Interest), S129821

#05-10 Sara M. v. Superior Court (Tuolumne County Dept. of Social Services, Real Party in Interest), S129821. (F045972; 123 Cal.App.4th 1251; Superior Court of Tuolumne County; JV5731.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Can the juvenile court terminate reunification services at a six-month review hearing based solely on a parent's failure to maintain contact with a child during the six months preceding the hearing, where the child was over the age of three years on the date of the initial removal from parental custody and the initial removal was not on grounds of abandonment?

1:30 P.M.

(10) Boghos v. Lloyd's of London, S117735

#03-120 Boghos v. Lloyd's of London, S117735. (H024481; 109 Cal.App.4th 1728; Superior Court of Santa Clara County; CV803331.) Petition for review after the Court of Appeal affirmed an order denying a petition to compel arbitration. This case includes the following issues: (1) Did the "service-of-suit" clause in a disability insurance policy, under which the insurer consented to submit to "the jurisdiction of a court of competent jurisdiction" on any claim of failure to pay benefits due under the policy, authorize the insured to bring a court action based upon the insurer's failure to pay benefits allegedly due under the policy and support the trial court's denial of the insurer's motion to compel arbitration under a general arbitration clause in the same insurance policy? (2) Do the requirements for arbitration of claims of employment discrimination established in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 and *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, including restrictions on imposing arbitration costs on a party pursuant to an adhesion contract, apply to the arbitration of a claim under an arbitration clause contained in a disability insurance policy?

(11) People v. Blair (James), S011636 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

THURSDAY, MAY 26, 2005—9:00 A.M.

(12) Koebke v. Bernardo Heights Country Club, S124179

#04-57 Koebke v. Bernardo Heights Country Club, S124179. (D041058; 116 Cal.App.4th 791; Superior Court of San Diego County; GIC767256.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issues: (1) Does the Unruh Act (Civ. Code, § 51) prohibit discrimination based upon marital status? (2) Does the act's prohibition against discrimination on the basis of gender or sexual orientation bar a business establishment from providing benefits only to legally married couples, so long as California law does not permit couples of the same sex to marry?

(13) In re Roberts (Orlando) on Habeas Corpus, S112505

#03-23 In re Roberts (Orlando) on Habeas Corpus, S112505. (B161777; 104 Cal.App.4th 151.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. The court limited review to the following issue: Should habeas corpus petitions challenging decisions of the Board of Prison Terms that deny a parole date for a prisoner be filed in the superior court and appellate district for the county in which the petitioner was sentenced or the county in which the petitioner is incarcerated?

(14) California State Personnel Board v. CSEA, S122058

#04-13 California State Personnel Board. v. CSEA, S122058. (C042437; 114 Cal.App.4th 11; Superior Court of Sacramento County; 02CS00787.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Does a "post and bid" program included in memoranda of understanding between the Department of Personnel Administration and certain state employee unions, under which vacancies in 50 percent of the positions in specified classifications must be filled by appointment of the most senior eligible employee who bids for the position, violate article VII, section 1(b), of the California Constitution, which provides that "permanent appointment and promotion [in the civil service] shall be made under a general system based on merit ascertained by competitive examination"?

1:30 P.M.

(15) Fitch v. Select Products Company, S116223

#03-99 Fitch v. Select Products Company, S116223. (E028592; 108 Cal.App.4th 80; Superior Court of San Bernardino County; SCV18360.) Petition for review after the Court of Appeal reversed an order in a civil action. This case includes the following issue: When the Department of Health Services has provided Medi-Cal benefits to an injured individual and the individual thereafter dies, can the department seek to recover the value of the benefits provided to the decedent from an award obtained by the decedent's survivors in a wrongful death action, even though the wrongful death award does not include any damages related to the decedent's medical expenses? (See Welf. & Inst. Code, § 14124.72(c).)

(16) Department of Conservation v. County of El Dorado (Brunius, Real Party in Interest), S116870

#03-103 Department of Conservation v. County of El Dorado (Brunius, Real Party in Interest), S116870. (C039428; 108 Cal.App.4th 672; Superior Court of El Dorado County; PV002958, PV002959.) Petition for review after the Court of Appeal affirmed a judgment of dismissal of a civil action. This case includes the following issue: Does the Director of the Department of Conservation have standing to file a petition for writ of administrative mandate challenging the validity, under the Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq.) and the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), of a local lead agency's approval of reclamation plans and financial assurances for surface mining operations?

People v. Gray (Mario), S014664 [Automatic Appeal] (Rescheduled to the May 31st calendar.)

(17) People v. Dunkle (Jon), S014200 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.